IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE TWENTY FIFTH DAY OF OCTOBER
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE V.ESWARAIAH

WRIT PETITION No. 22837 of 2005

Between:

Kukkapalli Chinavengaiah

..... PETITIONER

AND

The Election Authority for the

Societies-cum-District Collector,

Nellore, Nellore District and another

.....RESPONDENTS

ORDER:

Seeking a Mandamus, declaring the action of the 2nd respondent in rejecting the nomination of the petitioner as a member of the Managing Committee of the Kammavaripalem Primary Agricultural Cooperative Society, Kammavaripalem, Duttaluru Mandal, Nellore District from the 6th territorial Constituency, as illegal and arbitrary, the present writ petition is filed.

Heard the learned counsel for the petitioner and the learned Government Pleader for Cooperation.

The petitioner is alleged to be the member and voter of the Kammavaripalem Primary Agricultural Cooperative Society (for short 'PACS'). Pursuant to the Election Notification dated 10.10.2005 for conducting elections to the Managing Committee of the Society, the petitioner has filed his nomination, as a contesting candidate, on 18.10.2005. The scrutiny and publication of valid nominations is on 19.10.2005, for withdrawal of the nominations and publication of the final list of valid nominations is on 20.10.2005, and the polling is scheduled to be held on 26.10.2005. The nomination of the petitioner as a contesting candidate for Ward No.6 of the said PACS was rejected on the ground that his father was due of old debt.

It is stated that the father of the petitioner died on 09.02.1998 and the due payable by his father is not aware to the petitioner. It is further stated that no notice was issued to the petitioner by the respondents in this regard. Though there is obligation on the part of the petitioner to pay due amount payable by his father, but it cannot be said that the petitioner is defaulter in payment of amount to the society in the absence of any notice issued to him. The petitioner is liable to pay the due amount from out of the property left over by his father. Therefore, in the absence of any notice issued to the petitioner intimating him that his father is defaulter of old debt, it cannot be said that the petitioner is a defaulter in payment of any amount due.

As per Section 21-A of the A.P.Cooperative Societies Act, 1964, which deals with disqualification for membership of committee, under sub-clause (b) No person

shall be eligible for being chosen as, and for being, a member of the Committee, if he is in default in the payment of any amount due in case or kind to the society or any other society for such period as may be prescribed or is a delegate of a society which is defunct or which is in default as aforesaid.

Admittedly, the rejection order goes to show that the nomination of the petitioner was rejected on the ground that his father is defaulter of old debt. On instructions, the learned Government Pleader for Cooperation contended that the amount of due payable by the father of the petitioner is Rs.3,075/-. There is no record to show that the default order passed against the father of the petitioner was communicated to the petitioner, and also there is no record to show that any notice was issued to the petitioner intimating the said fact. Therefore, it cannot be said that the petitioner is a defaulter in payment of any amount due to the Society.

For the aforesaid reasons, the Writ Petition is allowed. The impugned order dated 19.10.2005, passed by the 2nd respondent, is set aside. The respondents are directed to treat the nomination of the petitioner as a valid nomination to participate in the election, which is going to be held on 26.10.2005, as a contesting candidate for Ward No.6 of PACS Kammavaripalem. No order as to costs.

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V.ESWARAIAH,J

Dated: 25.10.2005

Dsr

Note:

Issue wire at party's costs

B/o

Dsr